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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81828; File No. SR-NYSEAMER-2017-22]

October 5, 2017

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Modify the NYSE American Options Fee Schedule

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 4, 2017, NYSE American LLC (the “Exchange” or “NYSE American”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE American Options Fee Schedule (“Fee Schedule”). The Exchange proposes to implement the fee change effective October 4, 2017.⁴ The proposed change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Fee Schedule on September 29, 2017 (SR-NYSEAmer-2017-20) and withdrew such filing on October 4, 2017.

received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule, effective October 4, 2017. Specifically, the Exchange proposes to (i) modify the monthly rates for certain American Trading Permits (each an "ATP"); and (ii) reduce the Messages to Contracts Traded Ratio Fees.

Monthly ATP Fees

NYSE American Market Makers (each, an "MM") must have a certain number of ATPs each month in order to submit electronic quotations in option issues in their appointment.⁵ The Exchange currently employs a sliding scale for the cost to each MM per ATP, with the amount decreasing as the number of ATPs utilized increases, as follows:⁶

ATP Type	Monthly Fee Per ATP	Number Of Issues Permitted In A Market Makers Quoting Assignment
MM 1st ATP	\$8,000	60 plus the Bottom 45%
MM 2nd ATP	\$6,000	150 plus the Bottom 45%
MM 3rd ATP	\$5,000	500 plus the Bottom 45%
MM 4th ATP	\$4,000	1,100 plus the Bottom 45%
MM 5th ATP	\$3,000	All issues traded on the Exchange
MM 6th or more ATPs	\$2,000	All issues traded on the Exchange

⁵ See Fee Schedule, Section III.A. (Monthly ATP Fees), [available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf).

⁶ See *id.* (providing, in relevant part, that "[e]ach calendar quarter, with a one-month lag, the Exchange will publish on its website a list of the Bottom 45% of issues traded").

Thus, an MM that would like the privilege of quoting in all issues traded on the Exchange must have at least five ATPs. And, if an MM firm sponsors multiple individual MMs, the MM firm must pay for the requisite number of ATPs for each individual MM to submit quotes on the Exchange. For example, assume an MM firm has three individual MMs and that each MM needs to be able to submit quotes in all issues traded on the Exchange. In this example, the MM firm would have to pay for 15 ATPs (five for each individual MM).

The Exchange proposes to modify its monthly ATP rates such that it will charge \$2,000 for the 6th, 7th, 8th, and 9th ATP and would charge \$500 per month for the tenth or additional ATPs. The Exchange believes that this proposed reduction in ATP fees would encourage MM firms to have more individual MMs to quote on the Exchange, which will in turn encourage liquidity and depth of markets.

Messages to Contracts Traded Ratio Fees

The Exchange proposes to modify the Messages to Contracts Traded Ratio Fees (“Messages Fee”), which are assessed as part of the Monthly Excessive Bandwidth Utilization Fees.⁷ Currently, the Exchange charges \$0.01 per 1,000 messages (including orders or quotes) in excess of 1.5 billion messages in a calendar month if the ATP Holder does not execute at least 1 contract for every 1,500 – 5,000 messages entered, as determined by the Exchange.⁸ The Exchange proposes to reduce this rate from \$0.01 to \$0.005. The Exchange believes this reduced

⁷ See Fee Schedule, Section II (Monthly Excessive Bandwidth Utilization Fees) (“EBUF”) (describing both the Messages to Contracts Traded Ratio Fee and the Order to Trade Ratio Fee, which comprises the EBUF, and noting that if an ATP Holder is liable for either or both fees in a given month, that firm would only be charged the greater of the two fees). The Exchange is not modifying the Order to Trade Ratio Fees.

⁸ Currently, the Exchange has set the ratio at 1 contract for every 5,000 messages.

rate would still encourage market participants to be rational and efficient in the use of the Exchange's system capacity.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁰ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change to ATP fees is reasonable and not unfairly discriminatory because the fees are within the general range of similar fees assessed for trading permits on other exchanges.¹¹ In addition, the proposed change relates to the cost of ATPs for MMs and are therefore are not unfairly discriminatory to non-MMs because only MMs are required to submit quotations as part of their obligations to operate on the Exchange (resulting in the need for multiple ATPs). To the extent that the proposed fee encourages MM firms to have more individual MMs quoting on the Exchange, all market participant would benefit from competitive quoting that would increase opportunities to trade and enhance price discovery.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ See Chicago Board of Options Exchange ("CBOE") fee schedule, Market-Maker Trading Permit Sliding Scale, p. 7, available here, <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf> (charging \$5,000 per trading permit for the first ten permits); NYSE Arca Options Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES, available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf (imposing a sliding scale of fees, starting at \$6,000 per month for the first trading permit down to \$1,000 per month for the fifth and additional permits).

The Exchange also believes that the proposed reduction in the Messages Fees is reasonable, equitable, and not unfairly discriminatory because it should still encourage market participants to be rational and efficient in the use of the Exchange's system capacity, which benefits all market participants. The proposed reduced fee is reasonable because it would apply to all market participants that are subject to the Messages Fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹² the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed changes to the ATP fees are pro-competitive because the changes are consistent with similar fees on other options exchanges.¹³ The proposed change does not impose an undue burden on non-MMs as only MMs require multiple ATPs to satisfy quoting obligations on the Exchange. To the extent that the proposed change results in more competitive quoting, the proposed change is pro-competitive and should result in increased opportunities to trade as well as enhanced price discovery to the benefit of all market participants.

Similarly, the changes to the Messages Fees would not place an unfair burden on competition as it would continue to encourage efficient use of Exchange bandwidth and would apply to all market participants that are subject to the Messages Fee.

To the extent that these purposes are achieved, the Exchange believes that the proposed changes would enhance the quality of the Exchange's markets and increase the volume of orders directed to the Exchange. In turn, all the Exchange's market participants would benefit from the

¹² 15 U.S.C. 78f(b)(8).

¹³ See supra note 11.

improved market liquidity. If the proposed changes make the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become ATP Holders.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁴ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁵ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2017-22 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2017-22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2017-22, and should be submitted on or before November 2, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Brent J. Fields,
Secretary.

¹⁷ 17 CFR 200.30-3(a)(12).

